IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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R.S.A. No.884 of 2003
Date of Decision:06.11.2007

Smt. Ramesh and another

.....Appellants

Vs.

Ranjit Singh

.....Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Lokesh Sinhal, Advocate for the appellants.
Mr. Sudhir Aggarwal, Advocate for the respondent.

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Rajesh Bindal, J.

The defendants are in second appeal against the concurrent finding of fact by both the Courts below whereby the suit filed by the respondent- plaintiff for possession by way of specific performance was decreed by both the Courts below.

Briefly the facts are that the appellants/ defendants entered into an agreement to sell land measuring 17 kanal 15 marlas on 13.10.1988 for a total consideration of Rs.2,35,969/-. Earnest money of Rs.1 lac was paid. The sale deed was to be registered within ten days from the date of intimation of the grant of permission by the competent court regarding sale of land, which was owned by a minor. The permission was granted on 2.9.1989. On the basis of the evidence brought on record by the appellants, it could not be proved beyond doubt that the intimation thereof was given to the respondent. Initially, the respondent filed suit for permanent injunction on 19.1.1990, however, subsequent thereto in 1995 an amendment was sought for claiming the relief of specific performance as well, which amendment was allowed. The fact that the appellants were not intending to disclose the factum of receipt of permission by them for sale of land owned by the minor is evident from the circumstances that even in the written statement filed to the suit, no such fact was mentioned.

The plea of the appellants that the suit filed by the respondent was barred by time for the reason that the plea for specific performance was permitted to be raised by way of amendment permitted by the trial Court on 3.5.1996. The period of limitation is to be calculated either from the date of agreement, i.e., 13.10.1988 or 2.9.1989, the date when the permission was granted. The suit was clearly barred by time as in such cases the amendment was not to relate back to the date of filing of the suit but was to take effect from the date it was permitted for the purpose of consideration of the period of limitation. However, such an argument of learned counsel for the appellants is to be noticed and rejected for the simple reason that admittedly in terms of the agreement, the appellants were required to get permission from the competent Court to sell the land owned by the minor and intimate the same to the respondents. After the permission was granted on 2.9.1989, though it was claimed that registered letter was sent to the respondent, however, neither the same nor any other evidence was produced to prove the fact that the intimation or the permission was given to the respondent. Once it is not so, in my opinion, the findings of the learned Courts below in holding that the suit filed by the respondent was within limitation are strictly in conformity with law.

The contention of the appellants to the effect that the respondent failed to prove his readiness and willingness to get the sale deed registered is also meritless for the reason firstly that almost 40% of the total consideration money was paid by the respondent to the appellants as earnest money and further when the appellants themselves had failed to intimate about the permission having been granted by the competent court regarding sale of the land, they could not take a plea that the respondent was not ready and willing to get the sale deed executed. Still further, even the plea of fraud raised by the appellants before the Courts below could not be proved and further the case put up by the appellants that it was only a sum of Rs.30,000/- which was paid as earnest money as against Rs.1 lac claimed by the respondent was also shown to be totally misconceived for the reason that the receipt of Rs.1 lac as earnest money (Ex.P.2) was found to be duly signed by the executant of the agreement, Smt. Ramesh.

For the reasons mentioned above, I do not find any substantial question of law arise in the present appeal. The findings recorded by the

Courts below are plain and simple findings of fact on correct appreciation of evidence on record.

Accordingly, the appeal is dismissed.

November 06, 2007 **(RAJESH BINDAL)**
renu **JUDGE**